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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/486,582	07/10/2000	SAPNA GEORGE	851663.407	9626

7590 05/24/2007
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EXAMINER

FLANDERS, ANDREW C

ART UNIT	PAPER NUMBER
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2615

MAIL DATE	DELIVERY MODE
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05/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/486,582

Applicant(s)

GEORGE ET AL.

Examiner

Andrew C. Flanders

Art Unit

2615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached Remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Response to Arguments

Applicant's arguments filed 08 May 2007 have been fully considered but they are not persuasive.

Applicant alleges regarding the 101 rejections of claims 1 and 8:

"The Examiner appears to be incorrectly reading claims 1 and 8 as if they merely recited a decoded audio signal by itself or a single step of manipulating the encoded audio data. The language of claims 1 and 8 is not so broad. Claim 1 instead recites the preprocessing, producing and forming steps indicated above. Claim 8 recites the producing steps indicated above."

The Examiner respectfully disagrees. The Examiner is not merely reading the claims as if they recite a decoded audio signal or a single step of manipulating the encoded data, but rather a set of calculations/operations that are performed on a digital audio signal.

Applicant further alleges:

"The Examiner also incorrectly reasons that the result of a process involving calculations and manipulation of digital audio data cannot be a useful, tangible, concrete result. Claims 1 and 8 are directed to statutory methods because they are directed to a practical application (producing decoded audio data) that employs underlying data structures."

The Examiner respectfully disagrees. The producing of digital audio signals is performed via nothing more than a manipulation/calculation of the audio signals. While Applicant has attempted to distinguish this feature by amending the claims to recite

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"producing" rather than "calculating", the specification and prosecution history clearly shows that these steps are nothing more than calculations.

The claim is required to recite a practical application by physical transformation, which is clearly not present in claims 1 and 8. Rather, manipulations of data in the form of energy are claimed. Secondly, the claim/invention does not have a practical application by producing a useful, tangible and concrete result. Merely forming decoded audio signals does not fit the tangible requirement. It can be argued that it is useful and concrete, to which the Examiner does not necessarily agree, but merely forming signals does not fit the tangible requirement.

Applicant alleges regarding the 101 rejections of claims 11 and 14:

"The Examiner incorrectly analyzes claims 11 and 14 as "nothing more than a program or steps performed on a general purpose processor. The code/program implemented on the processor does not fall within one of the four enumerated statutory categories." On the contrary, it is certainly irrelevant to a determination of statutory subject matter whether a computer program could be used to implement a claimed process because countless US patents are granted for processes that can be implemented by computers controlled by computer programs - it is the entire basis for computer-readable medium claims."

The Examiner respectfully disagrees. It may be the entire basis for computer-readable medium claims to contain statutory subject matter for other US patents, however claims 11 and 14 do not claim this essential feature, rather claims 11 and 14 are directed to a means plus function claim. As a result, one must examine the disclosure to determine what the exact means plus function are being claimed. This is requirement of 112 6th paragraph.

Applicant further alleges:

The Examiner appears to be reading claim 11 and 14 as if they merely recited using a computer to perform an algorithm, but claims 11 and 14 are not so broad. As the Examiner notes, the claims are in means-plus-function format and specific structure and software combinations are identified in the specification for the recited functions.

Examiner respectfully disagrees. In a means plus function claim, one must determine what the actual means and functions being claimed are from Applicant's specification. As clearly pointed out, the means can be interpreted in one way as nothing more than program code operating on a DSP processor (see Final Rejection 08 February 2007 page 3). As a result, even though there may be other interpretations or Applicant does not intend to claim a computer program, the way it is claimed and disclosed allows for one non-statutory interpretation.

Applicant's arguments regarding the Claim Rejections Under U.S.C 103 filed 08 May 2007 have been fully considered but they are not persuasive for the same reasons stated in the Final Office Action 08 February 2007. The arguments filed are essentially identical to the previous arguments filed and thus are rebutted under the same grounds.


SINH TRAN
SUPERVISORY PATENT EXAMINER